Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Application by	)	
Qwest Communications International, Inc.	)	WC Docket No. 02-148
for Authorization to Provide	)	
In-Region, InterLATA Services	)	
in the States of Colorado, Idaho, Iowa,	)	
Nebraska and North Dakota	)	

COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.

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COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.

Sprint Communications Company L.P. opposes the above-captioned application of Qwest for authorization to provide in-region, interLATA services in Colorado, Idaho, Iowa, Nebraska and North Dakota.[1] The public interest requires that the application be denied unless the Commission is convinced that the local markets have been opened fully and irreversibly to competitive entry. In Sprint's view, this is not yet the case.

I. INTRODUCTION AND SUMMARY

A. Introduction

A key purpose of the 1996 amendments to the Communications Act of 1934 (the Act) was to open the local market to competition. To that end, Congress envisioned three avenues of local entry: resale, use of incumbent LEC unbundled network elements and facilities-based competition; and it placed incumbent LECs in the rather unnatural role of

[1] Qwest Communications International, Inc. Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota, CC Docket No. 02-148 (filed June 13, 2002) (Application).

assisting their would-be competitors by imposing the interconnection, resale, unbundling and collocation obligations of § 251(c).

To encourage the principal ILECs – the BOCs – to cooperate in this process, Congress enacted the "carrot" of § 271, giving the BOCs the right to enter the interLATA long distance market in-region once their local markets were truly open. The Commission recognized the importance of local market competition in one of the first applications it decided under this section.

> Although Congress replaced the MFJ's structural approach, Congress nonetheless acknowledged the principles underlying that approach that BOC entry into the long distance market would be anticompetitive unless the BOCs' market power in the local market was first demonstrably eroded by eliminating barriers to local competition. *** In order to effectuate Congress' intent, we must make certain that the BOCs have taken real, significant and irreversible steps to open their markets. We further note that Congress plainly realized that, in the absence of significant Commission rulemaking and enforcement, and incentives all directed at compelling incumbent LECs to share their economies of scale and scope with their rivals, it would be highly unlikely that competition would develop in local exchange and exchange access markets to any discernable degree.[2]

If the BOCs are allowed to enjoy the § 271 "carrot" before local competition is fully and irreversibly established, they will have little incentive to cooperate with competitive LECs thereafter, unless they are subject to continuing regulation. Successfully maintaining such a regulatory structure and adapting it to changes in technology will require significant on-going resources of both the Commission and interested parties, with, at best, uncertain results. It would be far preferable to withhold the § 271 "carrot" until local competition is sufficiently entrenched that competitive forces can supplant the intensive regulation and enforcement that otherwise would be required. Sprint does not

[2] Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, 12 FCC Rcd 20543, ¶18 (1997) (Michigan Order).

believe that point has yet been reached in the states for which Qwest is seeking § 271 authorization.

The public interest inquiry should focus on competition in the local market. In the recent decision of the Court of Appeals for the District of Columbia concerning the FCC's grant of SBC's 271 application for long distance service in Kansas and Oklahoma remanding the "price squeeze" issue,[3] the court commented on the Commission's inadequate consideration of the appellants' claim that the low volume of residential customers in these states and SBC's pricing which does not provide enough margin to make competition profitable are evidence of a "price squeeze" that is inconsistent with the public interest. The court stated: "Here, as the Act aims directly at stimulating competition, the public interest criterion may weigh more heavily towards addressing potential 'price squeeze.'" Id. at 555. Clearly, the court considers the Act's goal of "stimulating competition" to refer to competition in the local market, the market adversely affected by a "price squeeze." Thus, it is appropriate to consider whether the dismal state of competition and the low volume of residential customers served by facilities-based competitors is in the public interest when evaluating a § 271 application.

B. Summary

As shown below, the CLEC industry is in a state of crisis. The past year has been marked by the collapse of many major CLECs and a severe tightening of capital to would-be entrants. Further, the regulatory environment is now in a state of uncertainty as

[3] Joint Application by SBC for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, 16 FCC Rcd 6237 (2001), remanded, Sprint Communications Co. L.P. v. FCC, 274 F. 3d 549 (DC Cir. 2001).

a result of the recent decision of the D.C. Circuit Court of Appeals on UNE standards.[4] Uncertainty now reigns concerning whether or not the Commission will reduce the RBOCs' UNE and line sharing obligations, creating even more business uncertainty for the competitive industry.

Further evidence of the dismal state of competition is the fact that the RBOCs have failed to establish themselves outside their territory. In the states for which Qwest provides the percentage of CLEC residential lines – and Qwest's data on competitive lines appear to be overstated – the fact that CLECs provide service to less than 5 percent of residential customers using all three entry modes indicates that residential competition has not been firmly established.

II. THE CLEC INDUSTRY IS IN A STATE OF CRISIS (PUBLIC INTEREST)

The past year has been marked by the bankruptcy of many of the CLECs that were in the vanguard of the industry: Convergent, Covad, e-Spire, ICG Communications, Metropolitan Fiber Networks, McLeodUSA, Mpower, Net2000, Network Plus, NorthPoint, Rhythms, TeleGlobe, Teligent, Viatel Holding, Williams Communications Group, WinStar and XO Communications, to name a few.[5] WorldCOM, which claims to

[4] United States Telecom Association v. Federal Communications Commission, Nos. 00-1012 and 00-1015 (D.C. Cir., May 24, 2002).

[5] For a more complete list of CLECs that have filed for bankruptcy, *see* Comments of Sprint Communications Company L.P., In the Matter of Joint Application by BellSouth Corporation, Inc., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Georgia and Louisiana, CC Docket No. 01-277, filed October 19, 2001, p. 6. Covad emerged from bankruptcy on December 20, 2001. McLeodUSA emerged from bankruptcy under a plan which eliminated approximately $3 billion in debt and $325 million in interest. Bankruptcy Court Approves Strategy for Reorganization, The Wall Street Journal, A19 (April 8, 2002).

be the largest CLEC in the U.S. in addition to providing long distance services,[6] recently reported financial misrepresentations, and many believe it soon will be forced into bankruptcy. With CLECs facing a very bleak financial situation, investors have unambiguously indicated that they will remain wary of CLEC stocks until it becomes clearer "which CLECs will survive the carnage."[7] Industry experts agree that when the smoke clears from "the steady stream of Chapter 11 filings in the competitive telecom sector," only a few CLEC companies will remain.[8] In the meantime, the bleak state of the industry is making it extremely difficult for the surviving CLECs to obtain capital to expand their facilities. Given the current high risk associated with the CLEC industry, any financing that can be obtained comes at a high price.

In addition to these financial hurdles, CLECs now face regulatory uncertainty concerning the availability and pricing of UNEs. In its May 24, 2002 opinion, the D.C. Circuit addressed the RBOCs' appeals of the FCC's UNE Remand decision[9] in which the FCC reviewed its definition of "impair" and other unbundling criteria and its list of UNEs in light of the Supreme Court's decision in *Iowa Utilities Board.* The court remanded the Commission's UNE Remand Order in an opinion that displayed some

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[6] See Statement of Victoria D. Harker before the Subcommittee on Communications, Committee on Commerce, Science and Transportation, United States Senate, June 19, 2002.

[7] Telecom Services – Local: Hoexter's Broadband Bits, Merrill Lynch Capital markets, K. Hoexter, at *1 (June 18, 2001).

[8] Telecom Services – Alternative Carriers: Competition Telecom, Morgan Stanley, Dean Witter, P. Kennedy, at *1 (June 19, 2001).

[9] In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) ("UNE Remand Order).

hostility towards UNE-based competition, despite the Supreme Court's recognition, just a few days earlier, that the Commission could set UNE rates so as to promote local competition broadly.[10] The D.C. Circuit's decision, coming in the midst of the Commission's own UNE Review proceeding,[11] creates additional uncertainty for the already troubled competitive industry. At one extreme, the FCC could decide that the RBOCs are no longer required to provision many UNEs in metropolitan areas. Since a significant portion of the competitive industry relies on UNE components, CLEC investments likely will be scaled back until the regulatory environment becomes clearer. In the interim, funding for an industry already under severe financial pressure will be extremely scarce, and what is available will be high-priced.

At a minimum, until decisions are made concerning the availability of UNEs, the Commission must pay more attention to the market shares of the competition. It is highly unlikely that the percentage will increase at the same pace as it has in recent years, given the tumult recounted above. Indeed, it is more reasonable to expect that the market shares of competitors will shrink as the uncertainty about the availability and pricing of UNEs restricts further investments and sends additional competitors into bankruptcy.

III. OUT OF REGION RBOCs HAVE FAILED TO COMPETE AGAINST FELLOW RBOCs (PUBLIC INTEREST)

ILECs have chosen not to compete with each other for customers outside their territories. Why would this be the case? ILECs not only know the local market, but they

[10] Verizon Communications Inc. v. Federal Communications Commission, Nos. 00-511 *et al.* (S. Ct. May 13, 2002).

[11] In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Notice of Proposed Rulemaking, released December 21, 2001.

come equipped with the complex back-office systems needed to provide service efficiently and economically. It is telling, then, that despite earlier assertions to the contrary, the RBOCs have remained largely outside the local competition fray. If local competition were truly enabled, these RBOCs, who are high on the learning curve for the provision of local service, would have the incentive to enter the local markets outside their serving territories with bundles of local and long distance service.

In its recent order approving Verizon's Section 271 application for Rhode Island, the Commission found that the lack of entry by other carriers – either out-of-region RBOC or CLEC – can be explained by factors beyond the control of the applicant, "such as a weak economy, individual competing LEC and out-of-region BOC business plans, or poor business planning by potential competitors."[12] This suggests that the Commission believes that the public interest considerations should only include factors within the control of the applicant. Sprint disagrees. In Sprint's view, consideration of the public interest should include all factors, whether or not they are within the applicant's control, that bear on whether the local market has indeed been irreversibly opened. The fact that the carriers which are best prepared to enter the local markets are not even attempting to do so in any market outside their local territories is indicative of some deterrent to entry and should give the Commission pause as it considers whether or not local competition is fully and irreversibly enabled.

[12] In the Matter of Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island, CC Docket No. 01-324, Memorandum Opinion and Order, released February 22, 2002, ¶ 106 (Rhode Island Order).

Perhaps Sprint's experiences can shed some insight into why ILECs have not chosen to compete. Despite its own extensive experience in the local markets as an incumbent LEC with over 8 million access lines, Sprint has no significant CLEC operations today. On the contrary, Sprint has cut back significantly on its previously planned CLEC activities. Over one year ago, Sprint abandoned its local market entry via resale or UNE-P altogether. After efforts to establish local service in selected major markets in Georgia, New York, Texas and California, Sprint determined that entry through either of these means could not be profitable, even taking into account its ability to retain long distance customer accounts. In late 2000, Sprint stopped accepting new residential customers for local service in these markets. It no longer has any residential customers in either Georgia or New York, and only a few remain in California and Texas.

In October 2001, Sprint announced the discontinuance of its Sprint ION residential and business offerings. Sprint had viewed Sprint ION as a breakthrough, integrated offering that promised to give consumers a superior alternative to the local offerings of ILECs. However, after extensive testing, including commercial offering of the service in a number of states, Sprint determined that it could not economically justify continuation or expansion of the service.

Among the factors contributing to Sprint's decision to withdraw from the local market was the difficulty of obtaining the "last mile" facilities needed for the service from the RBOCs. No Bell Company has found it to be in its own interest to cooperate in establishing local competition. Thus, at every turn, there are lengthy delays, inadequate provision of service, and oftentimes high prices.

Due to the delays and failure of the Bell Companies to provide service, as well as the regulatory and legislative uncertainties regarding the future availability of facilities, discussed above, carriers have no assurance about the level of future rates or the availability of services and service elements. Making business decisions to expend massive amounts of capital is, in the face of such uncertainties, very risky.

IV. COMPETITION IN THE QWEST STATES HAS NOT BEEN FIRMLY ESTABLISHED (PUBLIC INTEREST)

As noted above, the Act allows competitors to enter the local market via three entry strategies: resale of the incumbent's network, the use of unbundled network elements, or interconnection to the incumbent's network by pure facilities-based providers, or some combination thereof. The Commission has found that all three means of entry should be available:

> Congress did not explicitly or implicitly express a preference for one particular strategy, but rather sought to ensure that all procompetitive entry strategies are available. Our public interest analysis of a section 271 application, consequently, must include an assessment of whether all procompetitive entry strategies are available to new entrants.

Michigan 271 Order ¶387. In discussing how it would evaluate whether all strategies are available, the Commission made clear that there should be competition in each means of providing competitive local service and to both business and residential customers:

> The most probative evidence that all entry strategies are available would be that new entrants are actually offering competitive local telecommunications services to different classes of customers (residential and business) through a variety of arrangements (that is, through resale, unbundled elements, interconnection with the incumbent's network, or some combination thereof), in different geographic regions (urban, suburban, and rural) in the relevant state, and at different scales of operation (small and large).

Id. ¶391.

In its Rhode Island Order, the Commission stated that the public interest standard does not require it to "consider the market share of each entry strategy for each type of service." ¶ 104. However, the public interest standard does require that local competition be healthy and sufficient to endure after RBOC entry. Low levels of facilities-based competition, particularly in the residential market, should signal that competitors are unwilling or unable to make a sizeable investment in the market. If competition is not fully and irreversibly enabled in that market, the RBOC will retain its monopoly control over residential customers, and its entry into the long distance market will not serve the public interest.

Although Qwest claims that meaningful competition exists, competition in the residential market is *de minimis*. In this application, Qwest estimates that there are only 514 CLEC residential lines, which represent 0.1% of the total residential lines in service, in Idaho as of April 30, 2001.[13] In Iowa, residential competition is also negligible. Qwest estimates 8,224 CLEC residential lines, which represent 1.1% of the total residential lines in service. *Id.* Even in Colorado and North Dakota the percentage of CLEC residential lines is below 5% of the total residential lines. *Id.* and Exhibit DLT-TRACK A/PI-CO-2. Such low percentages, and particularly those of one percent or less, clearly indicate that competitors are not willing to make a sizeable investment in the residential market and that competition in this market has not been fully and irreversibly enabled.

Further jeopardizing CLEC competition, particularly in the residential market, is the precarious financial state of many competitors identified by Qwest. As noted in

[13] Declaration of David Teitzel, Application, Supplemental Appendix A, Tab D, Exhibit DLT-TRACK A/PI-ND-2.

Section II above, many CLECs have filed for bankruptcy, and capital for expansion is severely restricted and high-priced. Thus, CLECs will be unlikely to invest in residential services in the future, and their market share is unlikely to grow.

The Commission has repeatedly stated that "factors beyond the control of the BOC, such as individual competitive LEC entry strategies, can explain low levels of residential competition."[14] However, small CLEC residential market shares are the norm, not the exception. Clearly, the reluctance of CLECs across the nation to enter the residential market is evidence of a widespread, systemic problem with the development of residential competition which cannot be explained away by "competitive LEC entry strategies." Rather, the miniscule market shares indicate that factors within the BOCs' control are preventing the full and irreversible entry of CLECs into the residential market.

V. QWEST'S ESTIMATION OF COMPETITIVE LINES INCLUDES DATA PRODUCTS AND ONE-WAY LINES WHICH ARE IRRELEVANT TO THE PUBLIC INTEREST ANALYSIS AND ARE OTHERWISE IMPROPERLY INFLATED (PUBLIC INTEREST)

In support of its public interest argument, Qwest estimates the percentage of local competition in the five states. Sprint believes that Qwest's methodology improperly inflates the CLECs' line estimates by including CLECs' high speed data lines and local lines which are not used for competitive local service and by attributing too many lines to competitors based on LIS trunks.

[14] *See, e.g., Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, Memorandum Opinion and Order, FCC 02-189, at para. 168 (rel. June 24, 2002).

Sprint does not compete with Qwest for local voice telephone service in any of the five states. Indeed, as discussed above, Sprint has withdrawn from the local voice market and has no stand-alone UNE loops. Nevertheless, Qwest attributes over 68,000 competitive access lines to Sprint in the five states. Approximately 10,000 of these lines are "Retail Resale Access Lines in Service,"[15] and the remainder are lines Qwest estimated based on the number of Sprint LIS trunks in service.[16]

Sprint suspects that the "Retail Resale Access Lines in Service" are actually one-way Dial IP lines used to access IP providers and some DSL lines. While Dial IP and DSL are niche markets that Sprint values highly, they are not substitutes for local exchange service, the market over which Qwest retains control and which is the market at issue here. To the extent that the market share information provided by Qwest reflects data services, it improperly overstates the relevant CLEC market share.

Concerning the LIS trunks in service, Qwest does not know how carriers use their interconnection trunks, and it should not be permitted to rely on estimates based on such trunks to demonstrate entry into the local exchange market. Sprint uses its LIS trunks primarily for its Dial IP service, which is not the relevant market. Qwest further improperly inflates its estimate of competitive access lines in service by double counting

[15] Declaration of David Teitzel, Exhibits DLT-TRACK A/PI-CO-1, DLT-TRACK A/PI-ID-1, DLT-TRACK A/PI-IA-1, DLT-TRACK A/PI-NE-1 and DLT-TRACK A/PI-ND-1, "Wholesale Volumes Data Report, Retail Resale Access Lines in Service (as of March 31, 2002)" for SPRINT COMMUNICATIONS COMPANY LP, SPRINT DENVER INC, SPRINTDATA and SPRINTNET.

[16] *Id.* at "Wholesale Volumes Data Report, Interconnection Trunks in Service (as of March 31, 2002." The number access lines is calculated by multiplying the number of LIS trunks attributed to Sprint for the 5 states by the 2.75 factor used by Mr. Teitzel to estimate "the total number of access lines served via CLEC-owned facilities." Declaration at 21.

Sprint Dial IP lines. In its table entitled "Estimated Competitive Access Lines in Service, LIS Trunk Method (as of March 31, 2002)," Mr. Teitzel includes Sprint's Dial IP lines once in the number of "Resold Access Lines" and again in the "Estimated Number of CLEC-Owned Lines and Stand-Alone Loops," which is based on the number of LIS trunks in service.[17]

Because Sprint does not provide competitive telephone exchange service in any of Qwest's states, all access lines attributed to Sprint should be removed from Mr. Teiszel's competitive analysis. Sprint cannot know what the true market share of competitive carriers is in the states here at issue. However, Qwest's gross misuse of Sprint data certainly supports an inference that Qwest has similarly misused data relating to other competitive carriers as well.

VI. CONCLUSION

Because Qwest has failed to demonstrate that there is meaningful competition in the five states here at issue, its application for § 271 relief should be denied.

Respectfully submitted,

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[17] Declaration at 23.

CERTIFICATE OF SERVICE

I, Sharon Kirby, do hereby certify that this 3rd day of July 2002 copies of the Comments of Sprint Communications Company L.P. on the Application by Qwest Communications International, Inc., for Authorization Under Section 271 to Provide In-Region, InterLATA Service in the States of Colorado, Idaho, Iowa, Nebraska and North Dakota, WC Docket No. 02-148, will be delivered as indicated below to the following parties:

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